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An unending variety of topics

Tuesday, January 17, 2006

Trial by ordeal

Hearing and reading many legal arguments has reinforced my belief that, as great as rational argument and readily observable phenomena are, we moderns have a superstition that they can solve every kind of problem. They can't. Rationality, absent the right kinds of express knowledge, may for some applications be very inferior to intuition based on tacit knowledge or rationality based on ancient wisdom rather than readily observed phenomena as its axioms. Too often "rational argument" is just shallow and foolish rationalization and carries false authority because it seems rational.

Furthermore, our ancestors' brains as far back some hundred thousand years were just as large as ours. Why then are we so quick to believe that the thoughts in those brains were far more foolish than ours?

Thus, I've long believed that there is hidden wisdom in ancient traditions that were long followed and that evolved through little more than trial and error rather than being purposefully designed and rationally explained. On the surface to our minds these traditions may seem foolish, pointless, or superstitious, but there is often hidden wisdom to be found. If found and expressed in modern rational terms, we may find something like that wisdom applies again, rather than our current beliefs, in future changed circumstances.

Here's a possible extreme example of some hidden wisdom in ancient tradition where we moderns see only rank superstition (although it may be a silly example, too -- the jury is still out).

We now consider the ancient trial by ordeal to be a barbaric relic, and rightly so, but below I give some reasons to believe that ordeals worked to some extent, and that they were among the best methods that legal systems could have used in Europe before around the 16th century when investigators started gaining substantial ability to gather and piece together circumstantial evidence. The other widely used methods of fact finding before this period were direct eyewitnesses to the actual crime(rare), witnesses as to reputation, confession (often obtained by torture), and grand juries of close neighbors. Usually two or more of these methods were combined. In England, it was common before the 13th century to combine a grand jury of neighbors (who usually had strong local knowledge of criminal and victim as well as often being witnesses to circumstantial evidence) with an ordeal. Grand jurors had such profound personal knowledge of the defendant, a fellow villager, that they would not, as they are said to do today, indict the proverbial ham sandwich. Rather, grand juries had usually lived with the defendant and victim for their entire lives, and thus had profound knowledge of the characters and circumstances that modern juries lack. They might, however, be susceptible to bias against the defendant. The ordeal was added as an extra required step to let God, as they saw it, reverse the grand jury if the grand jury made an error or swore falsely.

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Nick Szabo

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Some of the most common ordeals were those where the defendant was wounded in some way. If the wound was healing well, the defendant was pardoned, and if healing poorly, guilt was confirmed. For example, a hot iron would be used to burn the hand. The hand would be bandaged up and then examined in three days.

Two theories for how the ordeal could have been effective came across my mind earlier today (in a legal history class discussing ordeals). I just searched to learn that these were previously and independently thought of by somebody posting under the nym "WolfKeeper".

The first theory is that it was an instance of the placebo effect. With the placebo effect, often people will feel less pain, be more active (e.g. walk longer on a treadmill), be less depressed, etc. on treatment they think is real, but is not (e.g. a sugar pill) than with no treatment. Whether wounds will physiologically heal faster is more controversial. However, it does seem to be thte case that more extreme treatments, such as surgery, have a greater placebo effect than convenient treatments, such as taking a small, easy to swallow pill.

Defendants probably almost always believed the religious claims about ordeals that they were truthful messages from God. Under the placebo theory, if they so believed and were innocent, their wounds would heal faster; if they so believed and were guilty, they would heal slower. The placebo effect would have been strong both because of the extremity of the ordeal and the strength of the religious belief.

The second theory may be a physiological cause of a strong placebo effect on healing, or may be independently effective, or both. This theory is that cortisol levels would have been (and may still be) elevated higher and for longer periods for guilty defendants than for innocent defendants. The most extreme effect of extended periods of high cortisol is Cushing's Syndrome which can cause rapid weight gain, easy bruising, and slow healing of wounds. Weight gain and slow healing probably often occur to a lesser extent for less extreme elevations of cortisol. Perhaps ordeal by water and ordeals by wounds, respectively, could distinguish higher levels of cortisol typical in the guilty from lower levels of cortisol typical of the innocent. (I say "could" because much of the difference in stress, and thus levels of cortisol, could have been caused by the belief by both the guilty and the innocent that God would send a truthful signal via the ordeal. Thus the effect might not be readily replicable with typical modern defendants). The counter-argument is that an innocent person on trial might by as subject to long-term stress as a guilty person. This argument will have to be resolved by experimentation, if such a study is possible with modern defendants.

A third theory, which I at first dismissed in an instant and almost subconsciously as trivial, but which might in fact be very important, is that religious belief in the efficacy of ordeals might have convinced many guilty defendants to confess, whether or not the ordeal was otherwise effective. This theory might be tested if we can estimate the frequency of confessions from the historical record.

We might not be able to ethically test the placebo theory of ordeals. But the cortisol theory probably can be tested, for example by testing, at the same early phase of prosecution (before trial is held or charges are dropped) the cortisol levels of people and seeing whether they are later convicted by juries or whether their charges are dropped early by the prosecution (assuming we believe today's prosecutors and juries are reasonably accurate!)

The Catholic Church proscribed ordeals at the Fourth Lateran Council in 1215 and they soon fell out of favor in Europe. This proscription is probably due to the effect of recovering the ancient rational thinking of Roman law and Aristotle in Italy over the course of the 12th century. If the placebo effect theory is correct, the ordeal didn't merely become unpopular with the authorities -- it actually stopped working when people stopped believing that it worked.

On the European continent, the trial by ordeal was replaced with, in many cases, confession obtained by torture. It's not clear to me that a confession extracted by torture is any less barbaric or more effective than an ordeal. Torture and confession did, however, comport more closely to the reborn Roman law. In England, which lacked the strong hierarchical control by officialdom assumed by

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Roman procedural law, ordeals were replaced with trial by jury. Grand juries became pro forma and the main action moved to the "petite jury" or trial jury.

Not until around the 16th to 18th centuries did Europeans learn to use circumstantial evidence effectively. The methods the Continent developed for judges to formally weigh circumstantial evidence had quite a bit to do with the scientific revolution and the development of probability theory, but that is another story. Circumstantial evidence and science are two areas where it did pay off handsomely to express knowledge and apply rational thinking to it.

My thanks to Professor Renee Lerner and her wonderful legal history class for helping to inspire these thoughts.

Posted by Nick Szabo at 5:07 PM

29 comments:

Mike Huben said...

While ordeals might actually affect (say) cortisol levels or healing rates in the way you speculate, you'd also have to evaluate whether those who judged the result of the ordeal were able to discriminate (in a statistically significant manner) whether the result was for the defendent or not.

It strikes me as much more direct and obvious that ordeals were just another form of augury, performed with humans, whose major purpose was to provide spurious authority in important decisions.

Given the idea that such practices evolved, which hypothesis gives the greatest individual benefit that would encourage spread of the practice? Not the one that would judge accurately. Nope, it's the one that would allow folks to gain status and game the system by burning the ones they want to condemn longer than the ones they want to free. Etc.

7:46 AM

Jose said...

I'm with Mike, above, on this one. Intuitive, ancient knowledge is a field we should investigate with an open mind. But, in this case, I can think of many other trials that do not involve bodily harm but would, nonetheless, invite a sign from God in keeping with Christianity. Thus, I would argue that the physical violence in the ordeals you cite are a way of affirming the authority of the authorities. It has more to do with pre-liberal notions of justice than it does with efficiency.

8:16 AM

ServantofChrist said...

There's a fourth possibility nobody seems to be considering. Trial by ordeal worked. God would truly see to it that the guilty failed and the innocent passed.

It wasn't until we started turning our backs on God and disbelieved that it could work that it failed. If you don't believe then God will not help you.

We should bring back trial by ordeal. It is the best, most impartial way to solve a case. It allows God to speak and God knows all. If

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Trial by ordeal

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you are innocent you have nothing to fear from trial by ordeal so long as you believe.

2:02 PM

Anonymous said...

Either servantofchrist is joking or s/he is an absolute moron. Fortunately the world is largely civilized these days, so nobody is going to be stupid enough to take it seriously.

"Christians" like that are the reason atheism is on the rise.

Lucan

3:56 PM

Anonymous said...

Hey Servantofchrist, I hereby officially (and anonymously) accuse you of the act of heresy and treason of the high church. At noon you will be judged by fire. If you are innocent, you will not suffer the flames o' righteousness. If you are indeed guilty and an agent of the devil, you will perish 'neath the flames of holy fire. Sound familiar dumbass?

4:14 PM

ServantofChrist said...

Sounds fair. I am a faithful servant of God and of the church. If that actually happened I know God would spare me, because I am innocent.

What evidence do you have that trial by ordeal wouldn't work? There's not a single case where someone was judged innocent or guilty in a trial by ordeal and then the verdict was proven wrong. If there is please bring it up.

As for cortisol levels. Sounds like God is raising the cortisol levels to cause people not to heal as fast.

10:39 PM

Reynold said...

I know this guy is a Poe, but this is just so stupid even xians must shudder reading this.

It's easy to agree to do it when you know that it won't actually be done to you, isn't it?

What evidence do you have that trial by ordeal wouldn't work? There's not a single case where someone was judged innocent or guilty in a trial by ordeal and then the verdict was proven wrong. If there is please bring it up.

As far as I've been able to find, no one bothered to reinvistigate. Maybe you'll be the first, if you'll just supply us with your name, phone number, and address!

1:22 AM

Thammuz said...

Since you're such a good christian why don't we verify their efficency by starting with you?

3:29 AM

Anonymous said...

I think the placebo/cortisol arguments, while interesting, would have been wildly inaccurate in practice. To determine whether someone was healing slowly or rapidly, you would have have a very good knowledge of what their normal healing rate would be. Since people of that time could not take into account such things as existing low grade infections or chronic condition that would affect healing, there would be no way for them to determine accurately how fast the person should be healing.

11:54 AM

Anonymous said...

Salem Mass. produced more than it's share of this idiocy durring the 1700s. Unfortunatley, not one of the poor people accused of being in cahoots with the devil lived to testify about it. How convenient for the accuser(s). If you think your faith in the Almighty is supposed to be used in this manner, I'm afraid you have missed the point of faith entirely.

4:34 PM

ServantofChrist said...

'"Salem Mass. produced more than it's share of this idiocy durring the 1700s. Unfortunatley, not one of the poor people accused of being in cahoots with the devil lived to testify about it. How convenient for the accuser(s). If you think your faith in the Almighty is supposed to be used in this manner, I'm afraid you have missed the point of faith entirely."'

Faith means to believe, because you feel it in your heart. It doesn't mean to think. The devil puts all sorts of confusing 'evidence' to deceive us.

Faith is about believing unconditionally that God is there and he is just. A just God wouldn't let innocent people get found guilty when put throught an ordeal.

As for the witches. Well, those servants of Satan got what they deserved. I can't believe everyone believes they were innocent. There were so many witnesses. That many people don't lie. Now a few people came forward and said they lied. OK. A few people wanted to be part of the victim crowd. They were probably witches too and didn't want anyone to point the finger at them. Granted, maybe one or two were innocent. So they made a mistake. Instead of putting their full faith in God and having a trial by ordeal like they were supposed to they had a trial by humans. That's not going to yield fair and impartial results to trust in man to determine guilty or innocence. Only God knows who's guilty or innocent.

In Salem they stood up to the vile practice of witchcraft only to be fooled by the Devil that witchcraft wasn't real.

There are still witches today, not the 'Wiccans' that's a silly fad heathen religion. Real witches are secretive. They usually pretend to be good, pious Christians so no one would suspect.

7:40 PM

ServantofChrist said...

I met the Virgin Mary in a dream once. She told me that it is God's will to bring back trial by ordeal. She told me to surf online and find a place to send out the message.

All believing Christians it is time to answer God's call. Bring back trial by ordeal!

10:52 AM

CoS said...

Trial by Ordeal...

"Witch! You are to be placed on this dunking stool and submerged... should you be a witch, you will float and we shall burn you at the stake. Should you be innocent of this charge, you will drown."

Innocent or not, she's gonna die in a pretty nasty way. Anyone who wants that back needs their head examining...

11:53 AM

ServantofChrist said...

Most people aren't aware of it, but back when they did the water test most of the time if she didn't float they would dive down and try to save her. It didn't always work, but at least if it failed you knew she went to heaven, and if she had committed a different sin and doesn't go to heaven then oh well she's still getting what she deserved.

12:55 PM

Anonymous said...

How do you get to call yourself a servant of Christ when you so obviously don't give a shit about anything Christ stood for? You know, all that commie liberal stuff about mercy and forgiveness etc...

Lucan

4:47 PM

Father Heathen said...

Christians who want to bring back "trail by ordeal" should be the first to be set on fire, just to test it out. I mean they wouldn't have anything to worry about, right?

4:48 PM

Anonymous said...

You see, ServantOfChrist, you make a fundamental flaw in your assumptions about trial by ordeal: You say God will show them innocent, but there's a problem with that. God doesn't exist. And you have no evidence to say he does aside from some ancient fiction.

5:17 PM

Justin said...

Wow servantofchrist, you seem to be a Grade-A lunatic.

5:20 PM

CoS said...

ServentofChrist says "Most people aren't aware of it, but back when they did the water test most of the time if she didn't float they would dive down and try to save her."

Unfortunately, that isn't true. They allowed them to drown since intervening was going against Gods Will and was a sin. Any attempt to save those going through the trial ended up with the "rescuers" going through the same damned trial!

ServentofChrist says "It didn't always work, but at least if it failed you knew she went to heaven, and if she had committed a different sin and doesn't go to heaven then oh well she's still getting what she deserved."

Callous little offspring of unmarried parents, aren't you? You got any more lies you want to tell?

3:22 AM

Anonymous said...

"Faith means to believe, because you feel it in your heart. It doesn't mean to think. The devil puts all sorts of confusing 'evidence' to deceive us."

See that's your problem right there, you aren't thinking. Yes 'evidence' (sometimes known as facts) is really tricky to deal with, especially when your faith means you don't think about the facts.

10:11 AM

Anonymous said...

"I met the Virgin Mary in a dream once. She told me that it is God's will to bring back trial by ordeal. She told me to surf online and find a place to send out the message.

All believing Christians it is time to answer God's call. Bring back trial by ordeal!"

You're fucking looney.
Did you take your pills today?

10:54 AM

Anonymous said...

ServantofChrist,

You need to crack open the occasional history book. Not a single witch was executed or tortured during the Salem Witch Trials. These were all innocent people who had been wrongly accused by their neighbors; gullible, stupid, foaming-at-the-mouth zealots like yourself.

If you have proof that the accused were witches, present it.

Otherwise shut up and stop exposing yourself for the idiot you obviously are.

12:03 PM

ServantofChrist said...

How do we know that not a single one of the accused was a witch?

I haven't seen any proof in those history books. The historians are just assuming that, because we've been mislead to believe that witches aren't real. Speculation is not proof.

What evidence do I have? They put them on trial and found them guilty. Now, I admit trial by judge or jury isn't as fair as trial by ordeal because you are leaving it up to humans instead of God, but still most of the time the jury arrives at the right verdict. It's only rarely that someone is falsely convicted, and if those people lead virtuous lives oh well they went to heaven anyways.

1 or 2 may have been innocent, but they would've been spared if they had used trial by ordeal instead. Not necessarily the drowning test, but maybe having them scalded and seeing how fast the boils heal. When people are accused and you have a trial by ordeal to see if they are innocent or guilty so long as those people believe in God and are innocent then God will cause the boils to heal by the deadline for the verdict.

8:17 PM

Anonymous said...

ServantofChrist,

We know they weren't witches because:

1) they'd have been too afraid to practice witchcraft or asny other non-christian in the midst of their bloodthirsty christian neighbors - especially since it was well known that to not be a christian in early puritan america was punishable by death (interesting that the pilgrims came here to escape religious persecution then became inquisitors themselves)

2) trial by ordeal (such as the torture inflicted upon Giles Corey) proves nothing, except how much pain a person is able to endure before he or she either dies or makes a false confession to stop the pain

3) the only one who might have had any non-christian leanings in her past was Tituba, and she was christianized long before the trials, otherwise she wouldn't have been working for the PASTOR of the town church

4) the type of hysteria reported is also attributable to ergot poisoning. Ergot is a fungus that grows on rye, which was the predominate crop back then, it is practically invisible unless you know what to look for, causes hallucinations and high fevers, and the alkoloids that cause the fevers/hallucinations have been proven in recent experiments to survive the baking process

5) there was a baby in jail chained to her mother - I guess according to your logic the child (who later died of exposure and malnutrition), was guilty too?

6) there is not a single shred of evidence that any one of the people who were arrested, tortured and/or killed were guilty. No evidence was presented other than the testimony of a small group of hysterical girls who were probably suffering from a reaction to ergot, which is similar in symptoms to an overdose of LSD & Ecstasy combined.

The fact that you want a return to this type of superstitious bullshit demonstrates some important things about you. It says you're as bloodthirsty as the zealots who tortured their neighbors in Salem, that you're willing to accept someone's assumptions and hysterical bloviations in place of actual evidence, and that you're willing to torture your fellow humans at your whim.

You are poorly educated, brutal and an overall piss-poor human being.

2:26 PM

Anonymous said...

P.S. - Saclding people leaves sores behind, not boils. Boils are a skin infection that can leak poisons into the body if not properly drained.

The sores left behind by burning takes different amounts of time according to the time of exposure to scalding water/fire/torch/hot poker, and method used. This is another example of the stupidity of the zealot. Many factors lead to longer or sorter healing times. This proves NOTHING.

I truly hope you aren't employed in the medical field or in charge of any children. How sad for your patients/charges if you are.

2:31 PM

ServantofChrist said...

1) They had signed a pact with the devil. They figured he'd protect them. A good lesson to people that pacts with Satan never turn out well.
2) Giles Correy wouldn't have been tortured if God hadn't willed it.
3) She was lying about being Christian.
4) Ergot fungus? Scientific, atheistic nonsense.
5) I doubt the baby was guilty of witchcraft, but maybe it was guilty of another sin. Babies do sin. Or maybe it hadn't sinned, but God realized it would have a terrible life and called the baby home, to heaven.
6) there is not a single shred of evidence that any one of the people who were arrested, tortured and/or killed were innocent. The testimony of a small group of hysterical girls is credible evidence, not to mention all the other witnesses who came in to testify. Can you prove they were suffering from ergot poisoning? Are you going to go back in time and test their bodies? No? Then, Occam's razor would not have us imagining things that we don't know were there. What do we know? That the women testified that there was witchcraft. The simplest explanation is that the accused were guilty. Case closed.

Someone should build a statue to honor those poor victims of their vile witchcraft.

12:03 AM

Anonymous said...

ServantofChrist,

You are delusional and have no grasp of history. There were no victims because there were no witches.

You just want an outlet for your own violent tendencies, otherwise why would you desire the right to torture your fellow humans?

Not surprising, considering how evil and bloodthirsty your god is. One needs only read the bible to see the many, many acts of rape and murder he not only allowed his followers to commit, but either ordered them to commit or promised them rewards for committing.

His hate has generated your own.

Hold on to your delusions. Stupid, closed-minded hateful souls like yourself are not worth communicating with.

It's like trying to teach a pig to sing; it accomplishes nothing and annoys the pig.

Enjoy the rest of your dull existence, piggy.

8:22 AM

ServantofChrist said...

You know what they say. History is written by the victors. The satanic witches won and now they run our country. That's why history books say they weren't really witches.

You must understand God can not be evil. For he is God. He decides what is good and what is evil and he never does evil. Evil is the absense of God. If God decides someone has to die then it is God's will and it is good. Maybe they were bad and God wants to rush them to hell, or maybe they were about to encounter something terrible and God was getting them to heaven early so they wouldn't have to deal with it.

But for the most part if you are innocent God will show you to be innocent and if you are guilty God will show you to be guilty so long as the accused puts their faith in God that he will show the correct result.

That is why we must bring back trial by ordeal.

You keep repeating "they weren't really witches." over and over. Please provide some evidence other than that historians don't think they were real witches and a few people (probably under the command of Satan) renounced their testimony.

5:15 PM

GodsAngel said...

I agree with ServantofChrist. Quit ripping on him. He's obviously a true Christian. He believes that it's important to truly follow the Bible and the Church. Thank the Lord for people like ServantofChrist.

What we need is a theocracy of God. We must transform the judicial system to trial by ordeal, because that is how God wants it. God does not trust in people to judge. Only God can judge and tell us what to do through ordeals. The Bible does say judge not, so we aren't to judge. God is to judge and we are to be his faithful servants and carry out his judgements.

What I'm not seeing here is any evidence disproving trial by ordeal. And how could there be? You atheists just don't want to recognize God. God is true and God is good. God wants trial by ordeal. The priests of better times knew that.

We must bring our nation back to the ways of the 10th century. For those were blessed times, holier times. God was loved by all. Those who didn't love God received justice. Everything was so much more Christian back then. I wish it was the 10th century.

Remember, Jesus loves you.

10:27 PM

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